IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BRANDON DALE BIGGS and DIANA BETH BIGGS, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CREDIT COLLECTIONS, INC., an Oklahoma corporation, JANE DOE, a/k/a DEBRA DENTON, an individual, JOHN DOE, a/k/a ROBERT SULLIVAN, Defendants.	)	Case No.: 07 CV 00053 F

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

Summary of the Case 1

Summary of the Summary Judgment Motion and this Response 2

Summary Judgment Standard 2

Uncontroverted Material Facts of Plaintiffs that are Contested by Defendants (adopting the same paragraph numbers used in Plaintiffs' motion) 3

Uncontroverted Material Facts of Defendants 6

Argument and Authorities 7

I. Defendants complied with the FDCPA's mini-miranda requirement 7

A. The oral contacts with Plaintiffs 7

B. The telephone messages 8

II. Defendants did not violate the FDCPA by threatening garnishment 11

III. Plaintiffs cannot establish intentional violations of the FDCPA 12

IV. Plaintiffs have not established "multiple violations of 15 U.S.C. section 1692e(11) 13

V. Plaintiffs have no damages 13

VI. Injunctive relief is not available to private plaintiffs under the FDCPA 15

VII. CCI did not fail to properly train its collectors to follow the FDCPA and to monitor their compliance with the FDCPA 16

Conclusion 16

TABLE OF AUTHORITIES

Arslan v. Florida First Fed. Group, 1995 WL 73115 (M.D. Fla. 1995) 10

Asamba v. Community Bank, Abeline, Texas, 56 F.Supp.2d 1207, 1211 (D. Kan. 1999) 15

Belin v. Litton Loan Servicing, LP, 2006 WL 1992410 (M.D. Fla. July 14, 2006) 9

Committee v. Dennis Reimer, Co., L.P.A., 150 F.R.D. 495 (D. Vt. 1993) 10

Dowling v. Kucker Kraus & Bruth, LLP, 2005 WL 1337442 (S.D.N.Y. June 6, 2005) 14

Foti v. NCO Financial Systems, 424 F.Supp. 2d 643 (S.D.N.Y. 2006) 8

Hosseinzadeh v. M.R.S. Assoc., Inc. 387 F.Supp. 2d 1104 (C.D. Cal. 2005) 8, 9

Lester E. Cox Medical Center v. Huntsman, 408 F.3d 989 (8th Cir. 2005) 14

Leyse v. Corporate Collection Servs., Inc., 2006 WL 2708451, *5 (S.D.N.Y. Sep 18, 2006) 9

McNeill v. Graham, Bright & Smith, P.C., 2006 WL 1489502, *3 (May 26, 2006, N.D. Tex.) 15

O'Conner v. Check Rite, Ltd., 973 F. Supp. 1010 (Colo. 1997) 14

Sibley v. Fulton DeKalb Collection Serv., 677 F.2d 830 834 (11th Cir. 1982) 16

Stinson v. Asset Acceptance, LLC, 2006 WL 1647134, at *2-3 (E.D. Va. June 12, 2006) 9

West v. Nationwide Credit, Inc., 998 F.Supp. 642 (W.D.N.C. 1998) 10

Western Diversified Servs., Inc., v. Hyundai Motor America, Inc. 427 F.3d 1269 (10th Cir. 2005) 3

RULES:

Fed. R. Civ. P. 56(c) 2

FEDERAL STATUTES:

15 U.S.C. § 1692a(2) 10
15 U.S.C. § 1692(e)11 .... 7, 9, 13
15 U.S.C. 1692c(b) 9, 10
15 U.S.C. § 1692k(a)(2)(A) 14, 15
15 U.S.C. § 1692k(b)(1) 15
805(b) 9, 10

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BRANDON DALE BIGGS and DIANA BETH BIGGS, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CREDIT COLLECTIONS, INC., an Oklahoma corporation, JANE DOE, a/k/a DEBRA DENTON, an individual, JOHN DOE, a/k/a ROBERT SULLIVAN, Defendants.	)	Case No.: 07 CV 00053 F

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendants Credit Collections, Inc., Jane Doe a/k/a Debra Denton and John Doe a/k/a Robert Sullivan ("Defendants" or "CCI") respond to Plaintiffs' Motion for Summary Judgment ("Plaintiffs' motion") (dkt. 21).

SUMMARY OF THE CASE

Generally speaking, Plaintiffs have attempted to craft a federal case out of a handful of alleged technical violations of the FDCPA. Even if true, the violations as alleged were not substantive and caused Plaintiffs no damages. The violations that Plaintiffs allege are premised on a new, novel interpretation of the FDCPA, introduced through opinions issued by several district courts in other federal circuits in 2005, 2006 and 2007.

SUMMARY OF THE SUMMARY JUDGMENT MOTION AND THIS RESPONSE

Plaintiffs seek summary judgment "on all claims asserted by Plaintiffs," yet this entire case is premised on controverted material facts. It was the obviousness of these controverted material facts that caused Defendants to not file their own motion for summary judgment. Summary judgment cannot be granted when material facts are in dispute. Here, the parties have fundamentally opposite positions on what was and was not said and done, and the meaning of those controverted facts under the law. These are jury questions.

Although Plaintiffs seek summary judgment and damages through their motion, Plaintiffs motion addresses only their allegation that Defendants neglected to properly mirandize Plaintiffs. The motion makes no record as to damages. Thus, the only issue before the Court is a question of law of whether Defendants violated the FDCPA's requirements for providing warnings to debtors.

Finally, Plaintiffs seek summary judgment against individual employees of a corporation, when no allegation has been made that those employees acted outside the scope of their employment. Absent an allegation that they acted outside the scope of their employment and uncontroverted proof of that allegation, summary judgment should not be granted against these employees.

SUMMARY JUDGMENT STANDARD

Under Fed. R. Civ. P. 56(c), summary judgment is only appropriate if the pleadings and admissible evidence produced during discovery, together with any affidavits, show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Western Diversified Servs., Inc., v. Hyundai Motor America, Inc.*, 427 F.3d 1269 (10th Cir. 2005).

UNCONTROVERTED MATERIAL FACTS OF PLAINTIFFS THAT ARE CONTESTED BY DEFENDANTS
(adopting the same paragraph numbers used in Plaintiffs' motion)

2. CCI did not purchase this debt. Affidavit of Stacy Willis at ¶ 3 (Ex. 1)

3. Defendants admit that Diana Beth Biggs was contacted at her place of employment on October 17, 2006. Diana Beth Biggs asked that she be permitted to pay $10 towards her debt every five months, and if this request was refused, she threatened to retain an attorney to sue Defendants. *See* Contact History for October 17, 2006 (Ex. 6 to Plaintiffs' motion). Diana Beth Biggs was told that failure to pay her debt within 14 days could result in referral of her debt to an attorney. *Id.* During this call, Ms. Biggs stated that she did not receive either of the letters sent to her concerning the debt, prompting Defendants to send her yet another letter. *Id.* Defendants specifically deny that any threat of garnishment was made. *Id.* Defendants deny that they either sought or received during any telephone conversation with Plaintiffs the address of Plaintiffs' bank or Plaintiffs' account numbers at any bank. *Id.* Defendants affirmatively state that they did seek and receive verification of the mailing address of Diana Beth Biggs' employer ("verified POE") [place of employment], which was Victory Christian Church. *Id.; see also* Affidavit of Joseph Droze. (Ex. 2)

4. Defendants admit that Plaintiff Brandon Dale Biggs contacted Defendants by telephone at their office on October 17, 2006. *See* Affidavit of

Brandon Dale Biggs at ¶ 3 (Ex. 2 to Plaintiffs' motion); *see also* Contact History for October 17, 2006 (Plaintiffs' Ex. 6). Defendants further admit that Brandon Dale Biggs raised the concept of garnishment, which Defendants understand to constitute an attempt by Plaintiffs to entrap Defendants into acknowledging a threat of garnishment that was never made, in an attempt to bolster future litigation against Defendants that had been threatened by Diana Beth Briggs earlier that same morning. *Id; see also* Droze Aff. (Ex. 2); *see also* Affidavit of Deborah Sloot (Ex. 3). This fact is established by Plaintiffs' election to tape their outgoing telephone calls. *See* Droze Aff. Plaintiffs' attempted entrapment is evident from the conduct of Brandon Dale Biggs, who played dumb during the call that he recorded, saying "we're new at this stuff, and we don't know what the heck's going on." *Id.; see also* Ex. 4 to Plaintiff's motion at p. 10. The evidence shows that both Plaintiffs were keenly aware of exactly what they were doing.

Defendants note that a non-denial of a threat to garnish wages is not the equivalent of making a threat to garnish wages. Especially in the context of hearsay, which is all that Brandon Dale Biggs offers on this topic. At one point Brandon Dale Biggs accuses CCI of telling his wife CCI would garnish his wages in 14 days; moments later, he's saying his wife told him it would be 30 days, and he injects his own assumptions about how garnishment would occur. *See* telephone transcript of Brandon Dale Biggs (Ex. 4 to Plaintiffs' motion at pp. 3-10). Defendants admit that during this call "the necessary oral warnings mandated by the FDCPA" were not stated to Brandon Dale Biggs, and Defendants affirmatively state that no such warnings are mandated when it is a debtor who initiates a contact with a debt collector.

5. Defendants admit that Diana Beth Biggs raised the concept of garnishment, which Defendants understand to constitute a scheme by Plaintiffs to entrap Defendants into acknowledging a threat of garnishment that was never made, in an attempt to bolster future litigation against Defendants that had been threatened by Diana Beth Briggs the previous day. *See* Contact History (Ex. 6 to Plaintiffs' motion). A non-denial of a threat to garnish wages is not the equivalent of threatening to garnish wages. The transcript of the telephone call referenced in Plaintiffs' motion demonstrates Plaintiffs' attempts to entrap Defendants into endorsing her garnishment conspiracy. *See* Diana Beth Biggs telephone transcript (Ex. 3 to Plaintiffs' Motion). Defendants affirmatively admit that during this call "the necessary oral warnings mandated by the FDCPA" were not stated to Brandon Dale Biggs, and Defendants affirmatively state that there is no requirement to do so when it is a debtor who initiates a contact with a debt collector.

6. Defendants admit that these answering machine messages do not include "oral warnings mandated by the FDCPA." Defendants deny that these answering machine messages can be attributed to any particular date or time. The Contact History maintained by Defendants establishes that no message was left on any answering machine of Plaintiffs on a Saturday, yet Plaintiffs' exhibit 5 so states. Plaintiffs' answering machine is not self-authenticating – its recordings and

its time stamps are only as accurate as Plaintiffs choose for them to be. Thus, these messages cannot establish any conduct occurring at any particular time.

UNCONTROVERTED MATERIAL FACTS OF DEFENDANTS

1. Defendants first advised Plaintiffs of their debt and Defendants' role in collecting that debt through letters sent August 28, 2006, and September 11, 2006. *See* Contact History (Plaintiffs' Ex. 6) at page one, noting "LTR 10." An exemplar copy of "LTR 10" is attached as Ex. 4 to this brief.

2. The first contact between Plaintiffs and Defendants was when Plaintiff Diana Beth Biggs contacted Defendants. *See* Contact History at p. 1, third entry, at time 14:34 (Ex. 6 to Plaintiffs' motion). This entry shows that the debtor, Diana Beth Biggs, telephoned Defendants' office, and said that she is paying all that she can right now. She was advised that paying her debt within 30 days, she could take a discount of 25% off of the amount owed on the debt. *See* Droze and Sloot Affs. (Exs. 2 and 3). Plaintiffs did not contest the debt at this time. *Id.* The first time that Plaintiffs ever contested the amount of the debt was when their attorney contacted CCI, which was after all of the telephone contacts raised in this lawsuit. *See* Contact History at October 23, 2006 (Pl. Ex. 6).

3. CCI requires its employees to comply with the FDCPA in the course of performing their duites. *See* Responses to Interrogatories of Plaintiffs by CCI, Debra Denton, and Robert Sullivan. (Exs. 5, 6 and 7). To that end, CCI trains its employees in FDCPA compliance both through multi-day dedicated training, and through continued education on a daily basis. *Id.*

ARGUMENT AND AUTHORITIES

I. Defendants complied with the FDCPA's mini-miranda requirement.

A. The oral contacts with Plaintiffs.

The FDCPA does not require a "mini-miranda" warning in all communications. Plaintiffs admit that in Defendants' first oral communication with Plaintiffs, Defendants provided the mini-miranda warning. *See* Plaintiffs' motion at p. 9. This complies with 15 U.S.C. § 1692(e)11, which states in part, "if the initial communication with the consumer is oral, in that initial oral communication," the mini-miranda warning must be given.

It is significant that Plaintiffs do not allege they were misled by Defendants. At no time did they ever believe that they were communicating with someone other than a debt collector. Only four oral communications occurred. As noted above, the first included the mini-miranda. Conversations two and three were initiated by Plaintiffs; they knew they were speaking with a debt collector because Plaintiffs placed the call. Indeed, it was Brandon Dale Biggs that informed CCI that he was calling about a hospital bill. (Ex. 4 to Plaintiffs' Motion, at p. 2.)

The plain language of the FDCPA does not require a debt collector to identify itself as a debt collector when it is the *debtor* who contacts the *collector*. The FDCPA states in relevant part:

> 15 USC 1692e False or misleading representations
> Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> (11).........the failure to disclose in subsequent

> communications that the communication ***is from*** a debt collector...

Id. (emphasis added). Although Plaintiffs complain that on the one occasion when they called CCI, CCI did not adequately identify itself, the language of the FDCPA states the mini-Miranda must be given only when a "communication is **from** a debt collector...." When the communication is from a debtor, this section is inapplicable.

The fourth of the four communications was initiated by CCI at the request of Brandon Dale Biggs, who directed CCI to call him at his workplace later in the day, to resume a telephone conversation that he initiated during his lunch break. *See* Brandon Dale Biggs telephone transcript at p. 13 (Ex. 4 to Plaintiffs' motion). As a simple continuation of a communication done at Plaintiff's request, Defendants cannot be said to have "failed to disclose" the debt collection purpose of the call.

B. The telephone messages.

After Plaintiff Diana Beth Biggs contacted Defendants on May 24, 2006, asking that she be permitted to continue paying only $10 every other month towards her debt, Defendants left messages on Plaintiffs' telephone answering machine. *See* Contact History (Ex. 6 to Plaintiffs' motion). Plaintiffs contend that these recorded messages were inadequate because they did not include a recitation of the "mini-miranda" warning. *See* telephone message transcripts (Ex. 5 to Plaintiffs' motion)

A mini-miranda warning was provided by Defendants during the first oral communication from Defendants to Plaintiffs, on October 17, 2006. See Plaintiffs' motion at p. 9. Plaintiffs urge the Court to adopt the reasoning of *Hosseinzadeh v.*

M.R.S. Assoc., Inc., 387 F.Supp.2d 1104 (C.D. Cal. 2005) and *Foti v. NCO Financial Systems*, 424 F.Supp.2d 643 (S.D.N.Y. 2006). These cases held that even when a collection agency leaves an answering machine message, that message constitutes a "communication" and thus it must conform to the FDCPA's requirements for mini-miranda content in oral communications.[1]

Defendants assert two defenses to Plaintiffs' theory of liability.[2] First, Defendants submit that the answering machine messages were not "communications" as defined by the FDCPA (*i.e.*, the conveying of information regarding a debt directly or indirectly to any person through any medium) because the messages did not convey any information regarding the debt, but only requested a return call.

Next, Defendants contend that compliance with § 1692e(11) – to the extent that section is applied hyper-literally against debt collectors – is incompatible with the requirements of § 1692c(b), which prohibits debt collectors from communicating with third parties who might hear the contents of an answering machine message. Section 805(b) of the FDCPA prohibits debt collectors from disclosing the existence

[1] So that the Court is fully informed, the *Hosseinzadeh* and *Foti* cases were the first cases that recognized an answering machine message as a "communication" and thus required inclusion of a mini-miranda warning in an answering machine message, they are not the last. *See also Belin v. Litton Loan Servicing, LP,* 2006 WL 1992410 (M.D. Fla. July 14, 2006) (Ex. 8); *Stinson v. Asset Acceptance, LLC,* 2006 WL 1647134, at *2-3 (E.D. Va. June 12, 2006) (vacated on other grounds) (Ex. 9); *Leyse v. Corporate Collection Servs., Inc.*, 2006 WL 2708451, *5 (S.D.N.Y. Sep 18, 2006) (Ex. 10).

[2] Again, in the interest of complete disclosure and candor with the Court, the two defenses raised by Defendants were considered by the courts identified in the preceding footnote; those courts declined to sustain the defenses. They are questions of first impression in the Tenth Circuit, however, and are raised here both for the Court's consideration and to preserve the record so that, if warranted, the Tenth Circuit can review the questions of first impression.

of a debt to third parties. The FDCPA expressly prohibits debt collectors from communicating any information to third parties, even inadvertently, with respect to the existence of a debt without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction. *See* 15 U.S.C. § 1692c(b).

When applied to the collection industry, requiring a debt collector to transmit its registered name at the beginning of a prerecorded message could create liability under the third party disclosure prohibition of the FDCPA. This is because debt collectors often have state registered names including words that relate to their business, for example, "ABC Recovery, Inc.," or, as here, "Credit Collections, Inc." By disclosing this information to a debtor's answering machine, the debt collector may violate § 805(b) of the FDCPA because the collector cannot know if the prerecorded message will be overheard by a person other than the debtor. The term "communication" is defined broadly under the FDCPA, and includes "the conveying of information regarding a debt directly or indirectly to any person through any medium," including over the telephone. 15 U.S.C. § 1692a(2). Federal courts have interpreted the third party disclosure prohibition liberally such that a third party need not be told expressly that the communication is about a debt.[3]

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[3] *See, e.g., West v. Nationwide Credit, Inc.*, 998 F. Supp. 642 (W.D.N.C. 1998); *Arslan v. Florida First Fed. Group*, 1995 WL 73115 (M.D. Fla. 1995) (violation of the FDCPA for a third party to merely construe the communication as referring to a debt); *Committee v. Dennis Reimer, Co., L.P.A.*, 150 F.R.D. 495 (D. Vt. 1993) (telephone message admissible as evidence of third party communication).

II. Defendants did not threaten garnishment.

Plaintiffs contend that a threat of garnishment was made by Defendants, and that when Brandon Dale Briggs mentioned it, the threat was not "denied." *See* Plaintiffs' Material Facts 3 and 4. It is notable that the only evidence of the alleged threat of a garnishment is an affidavit of Diana Beth Biggs that simply restates what is set out in a telephone transcript, and an affidavit of Brandon Dale Biggs that merely repeats hearsay as set out in his wife's affidavit. *See* Plaintiffs' Motion at exs. 1 and 2. Brandon Dale Biggs reports in his affidavit an alleged threat to garnish in "14 days", which he says he learned from his wife; this key detail, however, is absent from his wife's affidavit. *See* Brandon Dale Biggs Aff. at ¶ 2.

In comparison, the evidence that no threat of garnishment was made includes affidavits of Defendants Droze and Sloot, stating that no threat was made, and the contemporaneous Contact History narrative, which includes no mention of a threat of garnishment. Finally, even the telephone transcripts attached to Plaintiffs' motion contain no threats by CCI of garnishment.

Brandon Dale Biggs alleges that he advised CCI that a threat of garnishment had been made to his wife in an earlier call. Plaintiffs' motion then equates this simple fact to active misconduct by Defendants. Because the allegation was not adamantly controverted at the time, the allegation is itself offered as evidence that a threat of garnishment had been made. Non-denial of an allegation by a debtor in the course of a heated telephone call placed by a very agitated debtor is not an admission of an allegation.

The only two instances where a representative of CCI uttered the word "garnish" to Diana Beth Biggs are at pages 4 and 5 of exhibit 3 to Plaintiffs' motion. On page 4, Robert Sullivan advises that "you can't just, you can't garnish somebody's wages." On page 5, Mr. Sullivan advises Diana Beth Biggs that the Internal Revenue Service can garnish wages without a judge's order, and he urges Ms. Biggs to make it a priority to resolve her past-due federal income taxes.

At no point does any representative of CCI state to Plaintiffs that failure to pay their debt will result in garnishment. In comparison, Plaintiffs mentioned "garnishment" nine times in just two telephone calls. *See* telephone transcripts (exs. 3 and 4 to Plaintiffs' motion). The telephone transcripts show that Plaintiffs repeatedly goaded Defendants into threatening garnishment, but despite their efforts, Defendants denied any intent to garnish. Plaintiffs' attempt to manufacture an FDCPA claim should be rejected.[4]

III. Plaintiffs cannot establish intentional violations of the FDCPA.

Plaintiffs propose that any violations of the FDCPA were intentional. The proof that Plaintiffs offer of intentionality is the existence of two district court opinions; one, which addressed the frequency of mini-miranda warnings, and another, which found that mini-miranda warnings are appropriate for telephone answering machines. Plaintiffs do not establish in their motion that these court opinions are binding on Defendants, or on anyone else in the State of Oklahoma or the Tenth Circuit. The motion offers no evidence intent to violate the FDCPA.

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[4] The dates of the calls were October 17 and 18, 2006; only five days later, Plaintiffs' counsel telephoned CCI, laid out Plaintiffs' allegations in detail (featuring the garnishment allegations), and demanding payment of a $20,0000 settlement within 10 days). *See* Collection Notes, ex. 6 to Plaintiff's Motion, at p. 3. The evidence may well reveal that Plaintiffs were instructed by counsel to prompt Defendants into acknowledging an intent to garnish, thereby providing Plaintiffs and counsel with a cause of action to prosecute.

IV. Plaintiffs do not establish "multiple violations of 15 U.S.C. § 1692e(11).

Plaintiffs ask the Court to find that Defendants committed "multiple violations of 15 U.S.C. § 1692e(11)" merely "as set out in Plaintiffs' Complaint." Motion at 10. In the context of a motion for summary judgment, Plaintiffs cannot prove the occurrence of conduct simply by referencing an allegation in a Complaint. *See* "summary judgment standard," *supra* at pp. 2-3.

V. Plaintiffs have no damages.

Plaintiffs' motion seeks "proper damages as requested in their Complaint." Plaintiffs' motion at p. 10. Because Plaintiffs make no showing of entitlement to damages, none should be awarded.

At the outset, Plaintiffs do not address actual damages in their motion. In the Complaint, each Plaintiff seeks $100 in actual damages for "the above violations of the FDCPA." Complaint at ¶ 21. Each Plaintiff asks another $100 for "intentional infliction of emotional distress." *Id.* at ¶ 23. Likewise, each seeks $100 for "gross negligence." *Id.* at ¶ 25. When asked to provide copies of "all documents relating to or referencing any actual damages that you allege in this Lawsuit," Plaintiffs' response was in the negative. Responses to Defendants Request for Production at response no. 4, dated May 4, 2007. (Ex.11) Absent evidence of actual damages, an award of actual damages cannot be made.

By statute, Plaintiffs can recover no more than $1,000 each in this proceeding. *See, e.g., Dowling v. Kucker Kraus & Bruth, LLP*, 2005 WL 1337442 (S.D.N.Y. June 6, 2005) (awarding $550 per plaintiff in two-plaintiff action; refusing to make additional awards of damages to plaintiffs for each defendant in the action). (Ex. 12)

A court can award statutory damages for violations of the FDCPA, not to exceed $1,000. 15 U.S.C. § 1692k(a)(2)(A). Plaintiffs suffered no actual damages in this case. The sole FDCPA noncompliance was Defendants' alleged failure to leave mini—miranda warnings on answering machine messages. Each and every one of these messages was left after Plaintiff Diana Beth Biggs had telephoned Defendants, and after she had advised Defendants that she was "paying all she can right now," demonstrating that: Plaintiffs were aware that they owed a debt, they did not dispute the debt, and they intended to pay the debt.

Courts base calculations of statutory damages on four factors:

- was the violation of the FDCPA merely technical or was it material,
- did the Plaintiff suffer actual damages due to the violation,
- the frequency and persistence of the non-compliance with the FDCPA, and
- was the non-compliance intentional or inadvertent.

See, e.g., Lester E. Cox Medical Center v. Huntsman, 408 F.3d 989 (8th Cir. 2005); *O'Conner v. Check Rite, Ltd.*, 973 F. Supp. 1010 (Colo. 1997). Applying those factors here, it is evident:

- any violation was not material;

- Plaintiffs suffered no actual damages;
- Plaintiffs allege only a handful of instances of non-compliance, and
- the non-compliance was not intentional, as shown by the evidence of CCI's significant commitment to compliance with the FDCPA.

Assuming for purposes of damages that Defendants failed to provide a mini-miranda on a handful of answering machine messages left over a period of months, such a violation of the FDCPA – if it was a violation of the FDCPA – was only technical in nature. In the absence of actual harm, it would be proper for the Court to decline to award statutory damages:

> 15 U.S.C. § 1692k(a)(2)(A) authorizes this Court to award additional damages for violations of the FDCPA, not to exceed $1,000. Because McNeill incurred only nominal damages in this case as a result of GBS and Shytles' violation of the FDCPA, the Court does not award any additional damages to McNeill. *See* 15 U.S.C. § 1692k(b)(1) (directing courts to consider the "nature" of the noncompliance when determining the amount of additional damages under the FDCPA).

McNeill v. Graham, Bright & Smith, P.C. 2006 WL 1489502, *3 (May 26, 2006, N.D. Tex.) (finding violation of FDCPA, awarding actual damages of $64, no statutory damages, and an attorney's fee of $600). (Ex. 13)

VI. Injunctive relief is not available to private plaintiffs under the FDCPA.

Plaintiffs' motion seeks summary judgment on "all claims asserted by Plaintiffs." Motion at 1. The Complaint asks that an injunction be imposed upon Defendants. *Id.* at ¶ 33(g). Injunctive relief is not available under the FDCPA. "[E]quitable relief is not available to an individual under the civil liability section of the [FDCPA]." *Asamba v. Community Bank, Abeline, Texas*, 56 F.Supp.2d 1207, 1211 (D. Kan. 1999) *quoting Sibley v. Fulton DeKalb Collection Serv.*, 677 F.2d 830, 834 (11th Cir.1982).

VII. CCI did not fail to properly train its collectors to follow the FDCPA and to monitor their compliance with the FDCPA.

Plaintiffs allege negligence against CCI because of CCI's suspected failure to adequately train and monitor its employees as to FDCPA compliance. Plaintiffs neglected to to address this claim in their motion, and the motion contains no evidence of purported negligence. In its defense, CCI asserts that the two employees of CCI who spoke with Plaintiffs are very well versed in the FDCPA and their training is documented. Because there is no evidence of negligence in Plaintiffs' motion, and because facts establishing the absence of negligence are set out in response, summary judgment cannot issue to Plaintiffs.

CONCLUSION

The FDCPA violations alleged by Plaintiffs are premised on conduct that never before has been recognized in the Tenth Circuit as being precluded by the FDCPA. Furthermore, the alleged violations are only technical, not material. At all times, Plaintiffs were aware that they owed a valid debt, and that they were knowingly negotiating payment plans for the debt with a debt collection agency. Finally, Plaintiffs suffered no damages.

For these reasons, Defendants request that the Court find that no violations of the FDCPA occurred, and ask that judgment be entered for Defendants. Should the Court find that violations of the FDCPA may have occurred, Defendants ask that the Court set the case for trial. Finally, Defendants request a finding that there is no evidence of actual damages or entitlement to injunctive relief, and that an order so issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 16th day of October, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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